

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

STEPHANIE GANT, court-appointed tutrix of the  
Deceased, PRESTON JONES' minor children,  
PRESLEY JONES, WHITNEY JONES, and  
HARRIETT JONES

Plaintiffs

VERSUS

OLD REPUBLIC INSURED AUTOMOTIVE  
SERVICES, INC., JON MICHEAL SIMMONS  
AND PORTS PETROLEUM, INC.

Defendants

\* CASE NO.:  
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\* SECTION " "  
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\* JUDGE  
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\* MAGISTRATE NO.:  
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\* MAGISTRATE:  
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\* JURY TRIAL

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NOTICE OF REMOVAL

TO: The Honorable Judges  
of the United States District Court  
for the Western District of Louisiana

Defendants, Old Republic Insurance Company (*improperly named as Old Republic Insured Automotive Services, Inc.*) and Ports Petroleum Company, Inc. (*improperly named as Ports Petroleum, Inc.*), file this Notice of Removal pursuant to 28 U.S.C. §§ 1332 and 1441, and hereby remove this matter from the 5<sup>th</sup> Judicial District Court for the Parish of Richland, State of Louisiana, to the docket of this Honorable Court on the grounds set forth below:

1.

On the 13<sup>th</sup> day of May, 2016, the attached *Petition for Damages, Wrongful Death and Survival Action* was filed in the 5<sup>th</sup> Judicial District Court for the Parish of Richland, State of Louisiana, entitled *STEPHANIE GANT, court-appointed tutrix of the deceased, PRESTON*

*JONES' minor children, PRESLEY JONES, WHITNEY JONES, and HARRIETT JONES versus OLD REPUBLIC INSURED AUTOMOTIVE SERVICES, INC., JON MICHEAL SIMMONS AND PORTS PETROLEUM, INC.*, bearing case number 45097.<sup>1</sup> Citation was issued on May 19, 2016.<sup>2</sup> Service of the *Petition* and Citation was made on Ports Petroleum Company, Inc. via its registered agent, Business Filings Incorporated on or about May 26, 2016. Service of the *Petition* and Citation was made on Old Republic Insurance Company by certified mail addressed to its agent for service of process, Prentice-Hall Corporation System, Inc. Upon information and belief, Jon Micheal Simmons has not been served with the *Petition*, as the record is devoid of any service return.

2.

Plaintiffs' *Petition* alleges that Preston Jones was involved in a motor vehicle accident that occurred on or about August 24, 2015, in Richland Parish, Louisiana.<sup>3</sup> As a result of the accident, Preston Jones died and the plaintiffs allege wrongful death and survival damages. The plaintiffs allege that they are all Louisiana residents.<sup>4</sup>

3.

In the *Petition*, plaintiffs name Old Republic Insurance Company, Jon Micheal Simmons and Ports Petroleum Company, Inc. as defendants. Plaintiffs allege Simmons' residency as the state of Mississippi, with mailing address 8030 Holly Grove Meeks, Cruger, Mississippi 38924.<sup>5</sup> Plaintiffs allege that Ports Petroleum Company, Inc. is a foreign corporation, authorized to do business in this state and parish, domiciled in the state of Ohio with its principle place of

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<sup>1</sup> Exhibit "A" (*Petition*).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

business at 1337 Blachleyville, Road in Wooster, Ohio 44691.<sup>6</sup> The Movers further aver that Old Republic Insurance Company is a foreign company domiciled in the state of Ohio with principle place of business at 8282 S. Memorial Drive, Suite 202, Tulsa, Oklahoma 74133.

4.

Ports Petroleum Company, Inc. and Old Republic Insurance Company show that, as only they have been served, the consent of Jon Micheal Simmons is unnecessary for removal.<sup>7</sup>

5.

The plaintiffs' *Petition for Damages* alleges claims for wrongful death and the pre-death pain and suffering ("survival action") of Preston Jones.<sup>8</sup> Plaintiffs itemize their damages at a minimum as follows:

- Past, present and future medical expenses;
- Past, present and future mental anguish;
- Past, present and future loss of wages;
- Loss of enjoyment of life;
- Fear of loss of life;
- Loss of inheritance;
- Wrongful death;
- Medical expenses;
- Funeral expenses;

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<sup>6</sup> *Id.*

<sup>8</sup> See, *Brister v. Schlinger Foundation*, 2005 WL 2036733 (E.D. La. 2005)(holding that only the defendants served at the time of the removal need to consent to removal); *Getty Oil Corp. v. Insurance Company of North America*, 841 F.2d 1254, 1262 n.9 (5<sup>th</sup> Cir. 1988)(providing only defendants served at time of removal need to consent to removal); *Cooper v. Sentry Select Ins. Co.*, 2008 WL 4610235 (W.D.La. 2008)(holding that non-removing defendants are not required to consent to or join in a removal until proof of service is filed into the record).

<sup>8</sup> Exhibit "A".

- Loss of consortium of a parent; and
- Loss of love, companionship and affection of a parent.

Ports Petroleum Company, Inc. and Old Republic Insurance Company aver that this *Petition for Damages, Wrongful Death and Survival Action* by its nature makes claims for damages in excess of \$75,000.00 in value, the minimal jurisdictional limit for diversity jurisdiction in this Court.

6.

Ports Petroleum Company, Inc. and Old Republic Insurance Company desire to have this matter removed from the docket of the 5<sup>th</sup> Judicial District Court, Parish of Richland, State of Louisiana pursuant to the provisions of 28 U.S.C. § 1332 et seq. and 28 U.S.C. § 1446 et seq.

7.

This Court has original jurisdiction of this action under 28 U.S.C. § 1332, and this action is, therefore, removable to this Court on the basis that:

A. The properly joined parties to this action are completely diverse:

1. The plaintiff and Court-appointed Tutrix, Stephanie Gant, is a person of the full age of majority and resident of the State of Louisiana.<sup>9</sup> Additionally, the minor plaintiffs are also domiciled in the state of Louisiana.
2. Jon Micheal Simmons is a resident of Cruger, Mississippi.
3. Ports Petroleum Company, Inc. is an Ohio corporation with its principal place of business at 1337 Blachleyville Road in Wooster, Ohio.<sup>10</sup>

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<sup>9</sup> Exhibit "A".

<sup>10</sup> Exhibit "A" and Exhibit "B".



4. Old Republic Insurance Company is a Pennsylvania company with its principle place of business at 414 W. Pittsburg Street, Greensburg, PA 15602.<sup>11</sup>

B. The amount in controversy herein exceeds the sum of \$75,000.00, exclusive of interest and costs.

1. The Fifth Circuit has explained that for purposes of establishing removal jurisdiction, a defendant may demonstrate that the amount in controversy exceeds \$75,000.00, “in either of two ways: (1) by demonstrating that it is ‘facially apparent’ from the petition that the claim likely exceeds \$75,000 or (2) ‘by setting forth *the facts* in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.’”<sup>12</sup>

2. Ports Petroleum Company, Inc. and Old Republic Insurance Company aver that it is facially apparent that the amount in controversy exceeds \$75,000, as this suit alleges wrongful death and survival actions on behalf of three minor children of the deceased party Preston Jones.<sup>13</sup>

C. The 5<sup>th</sup> Judicial District Court for the Parish of Richland, State of Louisiana, is located within the Western District of Louisiana pursuant to 28 U.S.C. § 98. Therefore, venue is proper in accordance with 28 U.S.C. § 1441(a) because it is the “district and division embracing the place where such action is pending.”

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<sup>11</sup> Exhibit “C”.

<sup>12</sup> *Grant v. Chevron Phillips Chemical Co.*, 309 F.3d 864, 868 (5th Cir. 2002) (emphasis in original) (quoting *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir.1995)).

<sup>13</sup> Exhibit “A”.

- D. Pursuant to 28 U.S.C. § 1446(a) a copy of the Petition for Damages is attached hereto and marked by identification as Exhibit "A." Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon plaintiffs and a copy is being filed with the Clerk of Court for the 5<sup>th</sup> Judicial District Court for the Parish of Richland, State of Louisiana. No other process, pleadings, or orders have been served upon defendant.
- E. No previous application has been made for the relief requested herein.
- F. The Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and Uniform Local Rules of the District Courts.
- G. Ports Petroleum Company, Inc. and Old Republic Insurance Company are entitled to and request a trial by jury herein on all issues.

**WHEREFORE**, the removing defendants, Ports Petroleum Company, Inc. and Old Republic Insurance Company, pray that the above action now pending in the 5<sup>th</sup> Judicial District Court for the Parish of Richland, State of Louisiana, be removed therefrom to this Honorable Court and for trial by jury.

Respectfully submitted,

/s/ Matthew J. Garver

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Attorneys for Defendants, Ports Petroleum Company, Inc.,  
Jon M. Simmons and Old Republic Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by e-mail and by placing same in the U.S. Mail, postage prepaid and properly addressed this 3rd day of June, 2016.

/s/ Matthew J. Garver